

FILED
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Donna Kay McKinney
Bexar County District Clerk
Accepted By: Lisa Morales

CITCML SAC1

2015CI19869
CAUSE NO. _____

QUALTEX LABORATORIES	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	224TH JUDICIAL DISTRICT
	§	
OCTAPHARMA PLASMA, INC.	§	
Defendant.	§	BEXAR COUNTY, TEXAS
	§	

**PLAINTIFF'S SUIT ON SWORN ACCOUNT
AND ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, QualTex Laboratories (“QualTex”), complaining of Octapharma Plasma, Inc. (“OPI”) and, pursuant to the Texas Rules of Civil Procedure, submits this Suit on Sworn Account and Original Petition to show the Court as follows:

I. DISCOVERY LEVEL

1. Discovery is intended to be conducted under Level 2 of Rule 190.3, of the Texas Rules of Civil Procedure.

II. PARTIES

2. Plaintiff QualTex Laboratories (“QualTex”) is a non-profit corporation with its principal place of operation in Bexar County, Texas.

3. Defendant Octapharma Plasma, Inc. (“OPI”) is a foreign corporation doing business in Texas and has its principal place of business in Charlotte, NC. OPI may be served with process by and through its registered agent, Incorp Services, Inc., 815 Brazos St., Suite 500, Austin, Texas 78701. QualTex requests that the Clerk prepare and issue service by certified mail.

III. JURISDICTION AND VENUE

4. Jurisdiction is proper in this Court because QualTex seeks money damages from OPI in an amount that exceeds the minimal jurisdictional limits of this Court.

EXHIBIT B

5. Venue is proper in Bexar County pursuant to Texas Civil Practice & Remedies Code §15.002 because all or a substantial part of the events giving rise to the claims occurred here and §15.020 as this dispute involves a major transaction that involves a venue selection clause in favor of San Antonio, Texas.

IV. STATEMENT OF FACTS

6. QualTex is an independent nonprofit, tax-exempt whole blood, platelet, and plasma testing laboratory based in San Antonio, Texas with a second testing facility in Georgia. QualTex is dedicated to the global public safety by ensuring that the available blood or plasma supply is not tainted by disease or illness, such as HIV.

7. Octapharma Plasma, Inc. ("OPI") is a privately owned human protein and plasma product manufacturer, including drugs for the treatment of immune disorders.

8. For almost 5 years, QualTex has provided OPI with testing services on samples sent by OPI to QualTex for testing. The current Testing Services Agreement dated April 1, 2014 ("TSA") provided that QualTex would invoice OPI twice each month for testing services and OPI would pay such invoices within thirty (30) days from the date of the invoice by check, wire transfer or ACH deposit. In the event that OPI failed or refused to pay invoices when due, OPI agreed to pay interest on the amount due at the rate of eighteen (18) percent per annum.

9. On November 4, 2015, QualTex demanded payment from OPI in the amount of \$8,432,966.16 for OPI's outstanding account balance through September 30, 2015. A true and correct copy of the Demand Letter is attached as Exhibit A. The Demand Letter did not include two invoices payable by OPI to QualTex on or before November 20, 2015, and did not include accrued interest. *Id.* OPI did not make payment to QualTex against its account balance by November 11, 2015 as demanded by the Demand Letter or prior to the filing of this petition

10. As of November 30, QualTex issued to OPI and OPI has not paid the following invoices:

Account #1000471		
Date	Invoice #	Amount
7/20/2015	Q20150843	\$951,182.81
7/31/2015	Q20150902	\$781,557.71
8/19/2015	Q20150981	\$855,940.65
8/31/2015	Q20151019	\$726,474.08
9/17/2015	Q20151084	\$285,262.33
9/30/2015	Q20151170	\$155,559.19
10/19/2015	Q20151209	\$66,283.55
10/31/2015	Q20151272	\$77,585.57
11/17/2015	Q20151334	\$63,241.32
Total		\$3,963,087.21

Account #1000465		
Date	Invoice #	Amount
6/30/2015	Q20150781	\$887,928.38
7/20/2015	Q20150844	\$1,288,381.31
7/31/2015	Q20150903	\$851,766.65
8/19/2015	Q20150982	\$591,578.44
8/31/2015	Q20151020	\$585,094.06
9/17/2015	Q20151085	\$328,007.52
9/30/2015	Q20151144	\$144,233.03
10/19/2015	Q20151210	\$76,020.19
10/31/2015	Q20151273	\$99,800.68
11/17/2015	Q20151357	\$45,523.94
Total		\$4,898,334.20

GRAND TOTAL		\$8,861,421.41
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The invoices summarized above reflect the true and just charges for testing services rendered by QualTex to OPI under the TSA for which QualTex maintains systematic records, including the types of testing QualTex performed; the date range the testing was performed; the quantity, the unit price, the extended price, and the total costs charged for the testing services QualTex rendered. *See Affidavit of Benjamin Lopez (the “Lopez Affidavit”) at ¶3, which is attached hereto as Exhibit B.* Consistent with its regular processes, QualTex issued invoices to OPI from June 30, 2015 through

November 17, 2015 (the “Invoices”). *Id.* True and correct copies of the Invoices are available and can be produced on request.

11. In addition to the Invoices, QualTex maintains Statements of Accounts, which itemize the customer’s outstanding invoices from QualTex invoice numbers, invoice dates, invoice amounts, the payment status or delinquency, and total account balance. *Id.*, ¶4. Per QualTex’s terms of service, payments for services rendered are due within 30-days after the date of invoice. *Id.* Although the Statements of Account report the delinquency of OPI’s account, it does not automatically calculate the interest due from the customer to QualTex for amounts that are overdue, which interest, which interest continues to accrue as long as the balance remains outstanding. *Id.*, ¶4. Attached hereto as Exhibits 1 and 2 are true and correct copies of QualTex’s Statements of Accounts for OPI dated November 18, 2015 reporting the balances due from OPI to QualTex for the Invoices from June 30, 2015 through November 17, 2015 (“Statements of Account”). As reflected on the Statements of Accounts, no payments have been received from OPI against the Invoices from June 30, 2015 through November 17, 2015.

12. As of November 30, 2015, OPI has failed and refused to pay its account balance with QualTex in the amount of \$8,861,421.41, exclusive of interest and costs of recovery. *Id.*, ¶5.

13. In or about 2014, OPI disclosed to QualTex that OPI intended to bring its testing services in-house. Therefore, in addition to the terms and conditions by which QualTex would provide testing services, the TSA included a 4 month “ramp-down” period before the end of the TSA as well as a one-time option for OPI to initiate the ramp-down between for a fee to facilitate OPI’s transition of testing services from QualTex by delivering the fee and notice to QualTex between June 1, 2015 and July 1, 2015. OPI did not timely deliver the ramp-down notice or pay the fee to QualTex. Accordingly, the TSA remains in place until March 30, 2016.

14. On or about August 21, 2015, OPI advised by telephone that it intended to suspend certain testing work with QualTex as of August 22, 2015. OPI still did not deliver the ramp-down notice and fee to QualTex to trigger the early ramp-down. Nevertheless, since September, 2015, OPI substantially reduced and then, on or about November 21, 2015, OPI ceased to deliver plasma samples to QualTex for testing. OPI normally delivered about 300,000 samples per month to QualTex for testing. OPI has not fulfilled its obligations under the TSA to ramp-down its services with QualTex.

15. Based on the foregoing facts, QualTex seeks to recover from OPI the balance due on OPI's account with QualTex as well as recoverable damages resulting from OPI's acts and omissions as may be legally and equitable available to QualTex.

V. CAUSES OF ACTION

A. Suit on Sworn Account

16. QualTex restates the facts alleged in paragraphs 6-15 as if recited in full.

17. QualTex provided services to OPI for the fees and charges set forth in the April 1, 2014 TSA. QualTex maintained a systematic record of the testing services performed, the fees charged for services rendered to OPI, and any offsets or credits that may be due. QualTex issues invoices to OPI on schedule which document OPI's account with QualTex and which are summarized on the Statements of Account attached to Lopez Affidavit as Exhibits 1 and 2. OPI's account with QualTex is delinquent. OPI owes QualTex \$8,861,421.41 for services rendered by QualTex to OPI pursuant to the TSA. The Invoices and the Statement constitute a verified account and represent a liquidated money demand, exclusive of interest, which continues to accrue at the contractual rate of eighteen (18) percent until the account is paid.

18. Despite QualTex's Demand, OPI has failed refused and failed to pay its account in full. By this claim, QualTex seeks to recover the unpaid balance of OPI's account with QualTex in

the amount of \$8,861,421.41, plus prejudgment interest at the contractual rate of eighteen (18) percent through entry of judgment, attorney's fees, costs of court, and postjudgment interest on all recovered sums at the contractual rate of eighteen (18) percent until the judgment is paid in full.

B. Breach of Contract

19. QualTex restates the facts alleged in paragraphs 6-14 as if recited in full.

20. QualTex and OPI entered into the TSA on or about April 1, 2014. The TSA is a binding agreement by and between the parties. QualTex has performed and fulfilled its obligations under the TSA, but OPI has failed and refused to fulfill its obligations to QualTex as related to the OPI's payment for services rendered by QualTex and the initiation of OPI's ramp-down of the TSA, including OPI's failure to timely provide the required notice and failure to deliver the fee for early ramp-down of testing services under the TSA.

21. As a consequence of OPI's failure to fulfill its contractual obligations to QualTex, QualTex has been damaged. By this claim, QualTex seeks to recover unpaid balance due for services rendered under the TSA, and damages for OPI's failure to deliver notice and payment to initiate the ramp-down early as provided by the TSA, as well as pre-judgment interest prejudgment interest at the contractual rate of eighteen (18) percent through entry of judgment, attorney's fees, costs of court, and postjudgment interest on all recovered sums at the contractual rate of eighteen (18) percent until the judgment is paid in full.

C. Attorney's Fees

22. OPI has refused to pay the full amount that is past due and owing to QualTex and has failed and refused to honor the TSA with QualTex. As a result, QualTex has been required to retain the undersigned counsel to represent its interest in this lawsuit to pursue and enforce QualTex's rights against OPI. QualTex has agreed to pay the undersigned counsel reasonable and

necessary attorney's fees and expenses incurred in this lawsuit, which QualTex seeks to recover from OPI pursuant to Chapter 38 of the Texas Civil Practices & Remedies Code.

VI. PRAYER

The foregoing considered, QualTex respectfully requests that the Clerk serve process against OPI and, upon final trial of the merits of QualTex's claims, QualTex have and recover judgment from OPI as follows:

- a. Actual damages in an amount within the jurisdictional limits of this Court;
- b. Prejudgment interest as provided by law and the Testing Services Agreement;
- c. Reasonable and necessary attorney's fees incurred to pursue claims;
- d. Costs of court;
- e. Post-judgment interest as allowed by law; and
- f. Such further legal and equitable relief to which QualTex is justly entitled.

Respectfully submitted,

By: /s/ Ricardo G. Cedillo

RICARDO G. CEDILLO
State Bar No. 04043600
rcedillo@lawdcm.com
DERICK J. RODGERS
State Bar No. 24002857
drodgers@lawdcm.com

DAVIS, CEDILLO & MENDOZA, INC.
McCombs Plaza, Suite 500
755 E. Mulberry Avenue
San Antonio, Texas 78212
Telephone: (210) 822-6666
Telecopier: (210) 822-1151

**ATTORNEYS FOR
QUALTEX LABORATORIES**



November 4, 2015

Octapharma Plasma, Inc.
Attn: Accounts Payable
c/o Mr. Barry Pomeroy, CFO
10644 Westlake Drive
Charlotte, NC 28273

Re: Request for prompt payment of overdue invoices

Dear Mr. Pomeroy,

The amount of **\$8,432,966.16** (as described below and on the attached statements/invoices) are valid obligations of Octapharma Plasma, Inc. and are overdue and immediately payable to QualTex Laboratories.

Account # 1000471/OCPI			
Date	Invoice #	Amount	Days Past Due
7/20/2015	Q20150843	\$951,182.81	76
7/31/2015	Q20150902	\$781,557.71	65
8/19/2015	Q20150981	\$855,940.65	46
8/31/2015	Q20151019	\$726,474.08	34
9/17/2015	Q20151084	\$285,262.33	17
9/30/2015	Q20151170	\$155,559.19	4
Total	Total	\$3,755,976.77	

Account # 1000465/LTSI			
Date	Invoice #	Amount	Days Past Due
6/30/2015	Q20150781	\$887,928.38	96
7/20/2015	Q20150844	\$1,288,381.31	76
7/31/2015	Q20150903	\$851,766.65	65
8/19/2015	Q20150982	\$591,578.44	46
8/31/2015	Q20151020	\$585,094.06	34
9/17/2015	Q20151085	\$328,007.52	17
9/30/2015	Q20151144	\$144,233.03	4
Total	Total	\$4,676,989.39	

Total Past Due **\$8,432,966.16**

The foregoing amounts do not include interest that is accruing on invoiced amounts that have not paid within thirty (30) days of the date of each respective invoice. In addition, the foregoing amounts do not include two invoices that are payable by Octapharma to QualTex on or before November 20, 2015.

Mary Gousie in the Accounts Receivable department here has made attempts to communicate with Octapharma representatives to discuss payment by Octapharma of past due amounts but no payments have been received.

Please remit payment of **\$8,432,966.16** by check or wire transfer to be received by QualTex Laboratories in San Antonio by November 11, 2015.

Thank you for your prompt attention. If you have any questions, please contact me or Dirk Johnson.

Sincerely,

Michael Shearn, JD, CHC, CHPC
Contracts Risk Analyst

Attachments

Via Regular Mail and email: Barry.Pomeroy@octapharasma.com

A SUBSIDIARY OF **BioBridge**
GLOBAL

EXHIBIT A

CAUSE NO. _____

QUALTEX LABORATORIES Plaintiff,	§ § § v.	IN THE DISTRICT COURT ____ TH JUDICIAL DISTRICT BEXAR COUNTY, TEXAS
OCTAPHARMA PLASMA, INC. Defendant.	§ § §	

**AFFIDAVIT OF BENJAMIN LOPEZ
IN SUPPORT OF SUIT ON SWORN ACCOUNT**

STATE OF TEXAS	§ §
COUNTY OF BEXAR	§

BEFORE ME, the undersigned notary, on this day, personally appeared Benjamin Lopez, a person whose identity is known and identified to me, who upon oath administered by me, deposed:

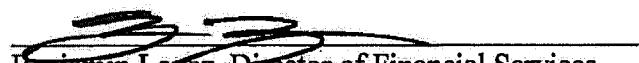
1. "My name is Benjamin Lopez. I am of sound mind and capable of making this sworn statement. I have personal knowledge of the facts stated here, which facts are true and correct.
2. "I am the Director of Financial Services of BioBridge Global, a nonprofit, tax-exempt corporation ("BioBridge") that is the sole member of QualTex Laboratories, a non-profit, tax-exempt company based in San Antonio, Texas ("QualTex"). In my capacity with BioBridge, I am responsible for the Financial Services department that oversees the accounts between QualTex and its customers, such as Octapharma Plasma, Inc. ("OPI"), including the invoicing and collection of customer accounts in accordance with the terms of the customer's testing services agreement with QualTex.
3. "As part of QualTex's normal record keeping system and practices, the Financial Services department and QualTex record and document the testing services performed for

QualTex customers on QualTex's invoices to its customers. The invoices report the types of testing QualTex performed, the date range the testing was performed, the quantity, the unit price, the extended price and the total costs charged for the testing services QualTex rendered. Consistent with its regular processes, QualTex issued invoices to OPI from June 30, 2015 through November 17, 2015 (the "Invoices"). True and correct copies of the Invoices are available and can be produced upon request.

4. In addition to the Invoices, the Financial Services department and QualTex create and issue a Statement of Account which itemizes the customer's outstanding invoices from QualTex by invoice numbers, invoice dates, invoice amounts, the payment status or delinquency, and total account balance. Per QualTex's contractual terms of service contained in the Testing Services Agreement (TSA) with OPI, payments for services rendered are due within 30-days of the date of invoice. Although the Statement of Account reports the delinquency of the account, it does not automatically calculate the interest due from the customer to QualTex for amounts that are overdue, which interest continues to accrue as long as the balance remains outstanding. Attached hereto as Exhibit 1 and 2 are true and correct copies of QualTex's Statements of Accounts for OPI dated November 18, 2015 reporting the balances due from OPI to QualTex for the Invoices from June 30, 2015 through November 17, 2015 ("Statements of Account"). As reflected on the Statements of Accounts, no payments have been received from OPI against the Invoices from June 30, 2015 through November 17, 2015.

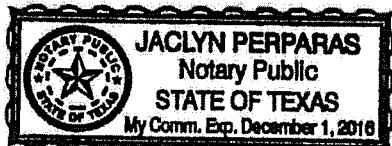
5. As of November 30, 2015, OPI has failed and refused to pay its account balance with QualTex in the amount of \$8,861,421.41, exclusive of interest and costs of recovery.

FURTHER AFFIANT SAYETH NOT.



Benjamin Lopez, Director of Financial Services,
BioBridge Global

SWORN TO AND SUBSCRIBED BEFORE ME on December 1, 2015, to certify which witness my hand and official seal.



Jaclyn Perparas
Notary Public in and for the State of Texas



6211 IH-10
San Antonio TX 78201

Phone : 210-757-9505 Ext.1254
International Phone : 800-292-5534 Ext.1254
A/R Fax : 210-731-5518
Email : accounts.receivable@biobridgeglobal.org

Statement of Account

Billing Address

OCTAPHARMA PLASMA INC.
10644 WESTLAKE DRIVE
CHARLOTTE NC 28273

Information

Customer Number 1000465
Statement Date 11/18/2015
Payment Terms: Net due in 30 days

Invoice Number	SO Number	Doc Type	Document Date	Arrears On 11/18/2015	Original Invoice Amount	Balance Due
Q20150781	1800003609	01	06/30/2015	111	887,928.38	887,928.38
Q20150844	1800003699	01	07/20/2015	91	1,288,381.31	1,288,381.31
Q20150903	1800003760	01	07/31/2015	80	851,766.65	851,766.65
Q20150982	1800003824	01	08/19/2015	61	591,578.44	591,578.44
Q20151020	1800003882	01	08/31/2015	49	585,094.06	585,094.06
Q20151085	1800003951	01	09/17/2015	32	328,007.52	328,007.52
Q20151144	1800004013	01	09/30/2015	19	144,233.03	144,233.03
Q20151210	1800004084	01	10/19/2015	0	76,020.19	76,020.19
Q20151273	1800004148	01	10/31/2015	12-	99,800.68	99,800.68
Q20151357	1800004237	01	11/17/2015	29-	45,523.94	45,523.94

Document Type: 01=Invoice; 06=Charge Back; 11=Credit Memo; 15=Payment; 16=Payment Difference

CURRENT	OVERDUE 1-30	OVERDUE 31-60	OVERDUE 61-90	OVERDUE 91+	ACCT BALANCE
221,344.81	144,233.03	913,101.58	1,443,345.09	2,176,309.69	4,898,334.20



6211 IH-10
San Antonio TX 78201

Phone : 210-757-9505 Ext.1254
International Phone : 800-292-5534 Ext.1254
A/R Fax : 210-731-5518
Email : accounts.receivable@biobridgeglobal.org

Statement of Account

Billing Address

OCTAPHARMA PLASMA ATLANTA
10644 WESTLAKE DRIVE
CHARLOTTE NC 28273

Information

Customer Number 1000471
Statement Date 11/18/2015
Payment Terms: Net due in 30 days

Invoice Number	SO Number	Doc Type	Document Date	Arrears On 11/18/2015	Original Invoice Amount	Balance Due
Q20150843	1800003701	01	07/20/2015	91	951,182.81	951,182.81
Q20150902	1800003763	01	07/31/2015	80	781,557.71	781,557.71
Q20150981	1800003827	01	08/19/2015	61	855,940.65	855,940.65
Q20151019	1800003885	01	08/31/2015	49	726,474.08	726,474.08
Q20151084	1800003954	01	09/17/2015	32	285,262.33	285,262.33
Q20151170	1800004040	01	09/30/2015	19	155,559.19	155,559.19
Q20151209	1800004087	01	10/19/2015	0	66,283.55	66,283.55
Q20151272	1800004151	01	10/31/2015	12-	77,585.57	77,585.57
Q20151334	1800004214	01	11/17/2015	29-	63,241.32	63,241.32

Document Type: 01=Invoice; 06=Charge Back; 11=Credit Memo; 15=Payment; 16=Payment Difference

CURRENT	OVERDUE 1-30	OVERDUE 31-60	OVERDUE 61-90	OVERDUE 91+	ACCT BALANCE
207,110.44	155,559.19	1,011,736.41	1,637,498.36	951,182.81	3,963,087.21

Exhibit 2